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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MAVRIX PHOTO, INC., a Florida  
Corporation,

Plaintiff,

v.

BUZZ MEDIA, INC.;  
WWW.HOLLYWOODTUNA.COM, a  
business form unknown;  
WWW.WWTDD.COM, a business form  
unknown; WWW.CELEBSLAM.COM,  
a business form unknown;  
WWW.THESUPERFICIAL.COM, a  
business form unknown; and DOES 1-10  
INCLUSIVE,

Defendants.

BUZZMEDIA, a California corporation,

Counterclaimant,

v.

MAVRIX PHOTO, INC., a Florida  
corporation,

Counterdefendant.

Case No. CV 11-01910 ODW (PLAx)

**DEFENDANT AND  
COUNTERCLAIMANT  
BUZZMEDIA'S:**

- (1) ANSWER TO COMPLAINT;
- (2) COUNTERCLAIMS AGAINST  
MAVRIX PHOTO, INC. FOR:
  - (a) DECLARATORY  
JUDGMENT;
  - (b) BREACH OF CONTRACT;
  - (c) CONTRACTUAL BREACH  
OF THE COVENANT OF  
GOOD FAITH AND FAIR  
DEALING;
  - (d) RESTITUTION FOR UNJUST  
ENRICHMENT; AND
- (3) DEMAND FOR JURY TRIAL.

Complaint filed: March 4, 2011

1  
2  
3 For its *Answer* to the *Complaint* by Mavrix Photo, Inc. ("Plaintiff"),  
4 defendant BUZZMEDIA admits, denies, and avers as follows:  
5

6 **"JURISDICTION AND VENUE"**  
7

8 1. Paragraph 1 of the *Complaint* contains mere legal argument and  
9 conclusions to which no response is required. To the extent a response is required,  
10 BUZZMEDIA denies the allegations in Paragraph 1 of the *Complaint*.  
11

12 2. Paragraph 2 of the *Complaint* contains mere legal argument and  
13 conclusions to which no response is required. To the extent a response is required,  
14 BUZZMEDIA denies the allegations in Paragraph 2 of the *Complaint*.  
15

16 **"PARTIES"**  
17

18 3. BUZZMEDIA lacks knowledge or information sufficient to form a  
19 belief as to the truth of the allegations in Paragraph 3 of the *Complaint*, and,  
20 accordingly, denies such allegations.  
21

22 4. BUZZMEDIA denies that its name is Buzz Media, Inc.  
23 BUZZMEDIA admits the other allegations in Paragraph 4 of the *Complaint*.  
24

25 5. BUZZMEDIA lacks knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in Paragraph 5 of the *Complaint*, and,  
27 accordingly, denies such allegations.  
28

1           6. BUZZMEDIA admits that www.wwtdd.com and  
2 www.thesuperficial.com are internet celebrity magazines, they receive Internet traffic  
3 from California, and they earn money from advertising. Except as expressly  
4 admitted, BUZZMEDIA denies the remaining allegations of Paragraph 6 of the  
5 *Complaint*.

6  
7           7. Paragraph 7 of the *Complaint* contains mere legal argument and  
8 conclusions to which no response is required. To the extent a response is required,  
9 BUZZMEDIA denies the allegations in Paragraph 7 of the *Complaint*.

10  
11           8. Paragraph 8 of the *Complaint* contains mere legal argument and  
12 conclusions to which no response is required. To the extent a response is required,  
13 BUZZMEDIA denies the allegations in Paragraph 8 of the *Complaint*.

14  
15                           **"FACTS COMMON TO ALL COUNTS"**

16  
17           9. BUZZMEDIA lacks knowledge or information sufficient to form a  
18 belief as to the truth of the allegations in Paragraph 9 of the *Complaint*, and,  
19 accordingly, denies such allegations.

20  
21           10. BUZZMEDIA admits that it operates celebrity magazines at the  
22 websites www.wwtdd.com and www.thesuperficial.com, California residents have  
23 viewed those websites, and it earns money from advertising. Except as expressly  
24 admitted, BUZZMEDIA denies the remaining allegations of Paragraph 10 of the  
25 *Complaint*.

1           11. BUZZMEDIA lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in Paragraph 11 of the *Complaint*, and,  
3 accordingly, denies such allegations.

4  
5           12. BUZZMEDIA admits that at the end of April 2008, the websites  
6 www.wwtdd.com and www.thesuperficial.com displayed photographs of Stacey  
7 Ferguson AKA Fergie. Except as expressly admitted, BUZZMEDIA denies the  
8 remaining allegations of Paragraph 12 of the *Complaint*.

9  
10           13. BUZZMEDIA admits that it operates www.buzznet.com and a  
11 number of other websites. Except as expressly admitted, BUZZMEDIA denies the  
12 remaining allegations of Paragraph 13 of the *Complaint*.

13  
14           14. BUZZMEDIA admits that it entered into an agreement with  
15 Plaintiff in December 2008 (the "*Agreement*") and that Plaintiff attached a copy of  
16 that *Agreement* as Exhibit A to Plaintiff's *Complaint*. The remainder of the  
17 allegations in this Paragraph consist of Plaintiff's summary of the *Agreement*, to  
18 which no response is required. To the extent a response is required, BUZZMEDIA  
19 denies the remaining allegations in Paragraph 14 of the *Complaint*.

20  
21           15. BUZZMEDIA denies the allegations in Paragraph 15 of the  
22 *Complaint*.

23  
24                           **"FIRST CLAIM FOR RELIEF**

25                   **[Copyright Infringement, 17 U.S.C. § 501, Against All Defendants]"**

26  
27           16. BUZZMEDIA incorporates its responses to Paragraphs 1-15 of the  
28 *Complaint*.

1           17. BUZZMEDIA lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in Paragraph 17 of the *Complaint*, and,  
3 accordingly, denies such allegations.  
4

5           18. BUZZMEDIA denies the allegations in Paragraph 18 of the  
6 *Complaint*.  
7

8           19. BUZZMEDIA denies the allegations in Paragraph 19 of the  
9 *Complaint*.  
10

11           20. BUZZMEDIA denies the allegations in Paragraph 20 of the  
12 *Complaint*.  
13

14           21. BUZZMEDIA denies the allegations in Paragraph 21 of the  
15 *Complaint*.  
16

17           22. BUZZMEDIA denies the allegations in Paragraph 22 of the  
18 *Complaint*.  
19

20           23. BUZZMEDIA denies the allegations in Paragraph 23 of the  
21 *Complaint*.  
22

23           24. BUZZMEDIA denies the allegations in Paragraph 24 of the  
24 *Complaint*.  
25

26           25. BUZZMEDIA denies the allegations in Paragraph 25 of the  
27 *Complaint*.  
28

**"SECOND CLAIM FOR RELIEF**  
**[Breach of Contract Against Buzznet]"**

26. BUZZMEDIA incorporates its responses to Paragraphs 1-15 of the *Complaint*.

27. In response to Paragraph 27 of the *Complaint*, BUZZMEDIA admits that it entered into the *Agreement* with Mavrix.

28. BUZZMEDIA denies the allegations in Paragraph 28 of the *Complaint*.

29. BUZZMEDIA denies the allegations in Paragraph 29 of the *Complaint*.

30. BUZZMEDIA denies the allegations in Paragraph 30 of the *Complaint*.

31. BUZZMEDIA denies the allegations in Paragraph 31 of the *Complaint*.

**"PRAYER FOR RELIEF"**

1. BUZZMEDIA denies that Plaintiff is entitled to the relief sought in Paragraph 1 of the Prayer For Relief.

2. BUZZMEDIA denies that Plaintiff is entitled to the relief sought in Paragraph 2 of the Prayer For Relief.

1           3.     BUZZMEDIA denies that Plaintiff is entitled to the relief sought  
2 in Paragraph 3 of the Prayer For Relief.

3  
4           4.     BUZZMEDIA denies that Plaintiff is entitled to the relief sought  
5 in Paragraph 4 of the Prayer For Relief.

6  
7           5.     BUZZMEDIA denies that Plaintiff is entitled to the relief sought  
8 in Paragraph 5 of the Prayer For Relief.

9  
10          6.     BUZZMEDIA denies that Plaintiff is entitled to the relief sought  
11 in Paragraph 6 of the Prayer For Relief.

12  
13          7.     BUZZMEDIA denies that Plaintiff is entitled to the relief sought  
14 in Paragraph 7 of the Prayer For Relief.

15  
16          8.     BUZZMEDIA denies that Plaintiff is entitled to the relief sought  
17 in Paragraph 8 of the Prayer For Relief.

18  
19                   **AFFIRMATIVE DEFENSES**

20  
21                 As separate and distinct affirmative defenses to Plaintiff's allegations,  
22 BUZZMEDIA alleges as follows:

23  
24                   **FIRST AFFIRMATIVE DEFENSE**

25                   **[Failure To State A Claim]**

26  
27                 1.     Plaintiff's *Complaint*, and each purported claim for relief contained  
28 therein, fails to state a claim upon which relief may be granted.

1                                   **SECOND AFFIRMATIVE DEFENSE**  
2                                   **[Lack Of Subject Matter Jurisdiction]**  
3

4                   2.     Plaintiff has no standing to sue BUZZMEDIA for copyright  
5 infringement, thereby depriving this Court of subject matter jurisdiction. In addition,  
6 Plaintiff, by suing BUZZMEDIA for breach of contract, has elected its remedy and  
7 has no standing to sue for copyright infringement, without which this Court lacks  
8 subject matter jurisdiction.  
9

10                                  **THIRD AFFIRMATIVE DEFENSE**  
11                                  **[Fair Use]**  
12

13                   3.     BUZZMEDIA's alleged conduct constitutes fair use.  
14

15                                  **FOURTH AFFIRMATIVE DEFENSE**  
16                                  **[Estoppel]**  
17

18                   4.     Upon information and belief, the *Complaint*, and each purported  
19 claim for relief stated therein, is barred by the doctrine of estoppel.  
20

21                                  **FIFTH AFFIRMATIVE DEFENSE**  
22                                  **[Laches]**  
23

24                   5.     Upon information and belief, the *Complaint*, and each purported  
25 claim for relief stated therein, is barred by the doctrine of laches.  
26  
27  
28



1                                    **SIXTH AFFIRMATIVE DEFENSE**

2                                    **[Unclean Hands]**

3  
4                    6.     Upon information and belief, the *Complaint*, and each purported  
5 claim for relief stated therein, is barred by the doctrine of unclean hands.  
6

7                                    **SEVENTH AFFIRMATIVE DEFENSE**

8                                    **[Lack Of Intent]**

9  
10                   7.     BUZZMEDIA at all times believed its conduct to be fair and  
11 lawful and therefore was done without any specific intent of alleged infringement.  
12

13                                   **EIGHTH AFFIRMATIVE DEFENSE**

14                                   **[Failure To Perform]**

15  
16                   8.     Plaintiff's claim for breach of contract is barred based on its own  
17 failure to perform its obligations under the *Agreement*.  
18

19                                   **OTHER AFFIRMATIVE DEFENSES**

20  
21                   9.     BUZZMEDIA presently has insufficient knowledge or  
22 information upon which to form a belief as to whether it may have additional, as yet  
23 unstated, affirmative defenses. BUZZMEDIA reserves the right to assert additional  
24 affirmative defenses.  
25  
26  
27  
28

1 Dated: June 17, 2011

SHEPPARD MULLIN RICHTER & HAMPTON LLP

2  
3 By



KENT R. RAYGOR

Attorneys for Defendant BUZZMEDIA



1 jurisdiction over BUZZMEDIA's state law counterclaims pursuant to 28 U.S.C.  
2 § 1367(a).

3  
4 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§  
5 1391(b) and (c) and because Mavrix has consented to venue by filing its *Complaint* in  
6 this district.

7  
8 **BACKGROUND FACTS**

9  
10 5. Mavrix and BUZZMEDIA entered into a contract entitled the  
11 *Internet Content License Agreement* made effective as of December 5, 2008  
12 (hereinafter the "*Agreement*"). Pursuant to that *Agreement*, Mavrix and  
13 BUZZMEDIA, among other things, resolved outstanding claims arising from the use  
14 by BUZZMEDIA and websites associated with it of certain photographs of Stacey  
15 Ferguson, aka "Fergie" (hereinafter, the "Accused Photographs"), Mavrix agreed to  
16 provide services and Internet content (primarily photographs) of prescribed quality to  
17 BUZZMEDIA for use by BUZZMEDIA and websites associated with it until January  
18 4, 2012, and, in exchange, BUZZMEDIA agreed to pay Mavrix a certain amount each  
19 month until the end of the *Agreement's* term.

20  
21 6. Mavrix, however, failed to provide the contracted-for services and  
22 Internet content.

23  
24 7. On or about December 10, 2010, BUZZMEDIA sent Mavrix a  
25 notice that it was in breach of its obligations under the *Agreement* and a demand that  
26 Mavrix cure that breach. Mavrix failed to timely cure such breach.

1           8.     On March 4, 2011, Mavrix sued BUZZMEDIA in this action,  
2 asserting, among other things, that BUZZMEDIA was in breach of its obligations  
3 under the *Agreement*. Mavrix, however, failed to send BUZZMEDIA the notice of  
4 breach and demand for cure required by Paragraph 12.1 of the *Agreement*. As a  
5 result, Mavrix lacked any basis for commencing this litigation and currently has no  
6 good faith basis for continuing this litigation.

7  
8           9.     Mavrix attached a copy of the *Agreement* as Exhibit 7 to its  
9 *Complaint* filed in this action on March 4, 2011. Mavrix filed that *Complaint* in open  
10 court, without filing it under seal, thereby violating the confidentiality requirements  
11 stated in Paragraph 8 of the *Agreement*.

12  
13           10.    Despite Mavrix's ongoing breaches of the *Agreement*,  
14 BUZZMEDIA has performed its obligations under the *Agreement*. Its payments to  
15 Mavrix required by the *Agreement* are current and there are no payment obligations to  
16 Mavrix currently outstanding. Mavrix, however, unjustly retains those payments  
17 despite the fact that it has materially breached the *Agreement*.

18  
19           11.    In light of the foregoing, Mavrix's ongoing prosecution of this  
20 lawsuit lacks any good faith basis.

21  
22                   **FIRST CLAIM FOR RELIEF**  
23                   **[Declaratory Relief]**  
24

25           12.    BUZZMEDIA realleges and incorporates herein by reference the  
26 allegations contained in Paragraphs 1 through 11 of these *Counterclaims*, as set forth  
27 above.

1           13. This counterclaim arises from an actual and justiciable controversy  
2 between Mavrix and BUZZMEDIA as to the obligations of the parties under the  
3 *Agreement*, alleged liability by BUZZMEDIA for copyright infringement and breach  
4 of contract, and the validity and enforceability of the copyright claimed by Mavrix.

5  
6           14. Therefore, BUZZMEDIA seeks a declaration from this Court of  
7 the following:

- 8  
9           a. BUZZMEDIA is not in breach of the *Agreement*;  
10  
11           b. BUZZMEDIA is not guilty of copyright infringement;  
12  
13           c. The copyright claimed by Mavrix that underlies Mavrix's  
14 copyright infringement claim against BUZZMEDIA, and its  
15 alleged work-made-for-hire status, are invalid and unenforceable;  
16  
17           d. Mavrix is not entitled to enhanced statutory damages pursuant to  
18 17 U.S.C. § 504(c) and Paragraph 9.4 of the *Agreement*;  
19  
20           e. The statutory damages being sought by Mavrix are limited to the  
21 single work allegedly infringed—which consists of a compilation  
22 of 84 photographs—and cannot be multiplied by the number of  
23 photographs in that compilation;  
24  
25           f. The maximum damages being sought by Mavrix are limited to the  
26 total revenue Mavrix contracted for and expected from the contract  
27 if the contract runs its course, minus the sums already paid to  
28 Mavrix; and

- 1 g. BUZZMEDIA is guilty of neither willful infringement nor gross  
2 negligence in connection with the Accused Photographs.  
3

4 **SECOND CLAIM FOR RELIEF**

5 **[Breach Of Contract]**  
6

7 15. BUZZMEDIA realleges and incorporates herein by reference the  
8 allegations contained in Paragraphs 1 through 14 of these *Counterclaims*, as set forth  
9 above.  
10

11 16. Mavrix has materially breached its obligations under the  
12 *Agreement* by, among other things:  
13

- 14 a. Violating its warrant (Paragraph 10.2) that the materials provided  
15 by Mavrix would be free from defects in material and  
16 workmanship;  
17  
18 b. Violating its promise (first paragraph of Schedule 1 to the  
19 *Agreement*) to provide "high quality images";  
20  
21 c. Failing to cure the diminution in quality and quantity of the  
22 materials provided and failing to provide the contracted-for  
23 services and product;  
24  
25 d. Filing and maintaining suit against BUZZMEDIA in violation of  
26 the bar against such actions stated in the last paragraph of  
27 Schedule 1 to the *Agreement*;  
28

1 e. Wrongfully terminating the *Agreement*; and

2  
3 f. Violating the confidentiality provision in the *Agreement*  
4 (Paragraph 8) by attaching it to Mavrix's publicly filed *Complaint*.  
5

6 17. BUZZMEDIA has performed all of its obligations under the  
7 *Agreement*. Mavrix remains in breach.  
8

9 18. As a direct and proximate result of Mavrix's acts of breach of  
10 contract as set forth above, BUZZMEDIA has suffered and will continue to suffer  
11 injury to its business, goodwill, and property in an amount not presently known.  
12

13 19. BUZZMEDIA is entitled to recover from Mavrix all compensatory  
14 and consequential damages it has sustained and will sustain as a result of Mavrix's  
15 acts of breach of contract as alleged herein. BUZZMEDIA is further entitled to  
16 recover from Mavrix the gains, profits, and advantages Mavrix has obtained as a  
17 result of the wrongful conduct alleged herein. BUZZMEDIA at present is unable to  
18 ascertain the full extent of its damages, or the gains, profits, and advantages that  
19 Mavrix has obtained by reason of the wrongful conduct described herein.  
20

21 **THIRD CLAIM FOR RELIEF**

22 **[Contractual Breach Of The Implied**  
23 **Covenant Of Good Faith And Fair Dealing]**  
24

25 20. BUZZMEDIA realleges and incorporates herein by reference the  
26 allegations contained in Paragraphs 1 through 19 of these *Counterclaims*, as set forth  
27 above.  
28



1           21. Implied into the *Agreement* was a covenant that Mavrix would not  
2 do anything that would deprive BUZZMEDIA of the benefits of the contract, and that  
3 Mavrix would perform its obligations under the *Agreement* in such a manner as to  
4 ensure that the purposes of the contract were accomplished.

5  
6           22. By its acts and failures to act as alleged herein, Mavrix has  
7 breached the implied covenant of good faith and fair dealing and deprived  
8 BUZZMEDIA of the benefits of its bargain.

9  
10           23. As a direct and proximate result of Mavrix's acts and failures to act  
11 as set forth above, BUZZMEDIA has sustained and will continue to sustain damage.  
12 The precise nature and amount of such accrued and continuing damage is not known  
13 to BUZZMEDIA and cannot be ascertained by it at the present time.

14  
15                           **FOURTH CLAIM FOR RELIEF**  
16                           **[Restitution For Unjust Enrichment]**  
17

18           24. BUZZMEDIA realleges and incorporates herein by reference the  
19 allegations contained in Paragraphs 1 through 23 of these *Counterclaims*, as set forth  
20 above.

21  
22           25. As a result of Mavrix's acts and failures to act as alleged above,  
23 Mavrix either has enjoyed benefits and received revenues, or will enjoy benefits and  
24 receive revenues, that it would not otherwise have enjoyed or received. These  
25 benefits and revenues are gained at BUZZMEDIA's expense and do not rightfully  
26 belong to Mavrix.

1                   26. The amount of the benefits and revenues wrongfully realized by  
2 Mavrix from its acts and failures to act as alleged herein is unknown to  
3 BUZZMEDIA. BUZZMEDIA is entitled as a matter of equity to restitution of those  
4 benefits and revenues wrongfully realized by Mavrix in an amount to be proved at  
5 trial.

6  
7                   **PRAYER FOR RELIEF**  
8

9                   WHEREFORE, BUZZMEDIA prays for judgment against Mavrix as  
10 follows:  
11

12                   1. For compensatory and consequential damages, according to proof  
13 at trial.  
14

15                   2. For a declaratory judgment declaring the items set forth in  
16 Paragraph 14, above.  
17

18                   3. For the recovery from Mavrix of all damages, gains, profits, and  
19 advantages that Mavrix has obtained as a result of the wrongful conduct alleged  
20 herein.  
21

22                   4. For costs and expenses, including attorneys' fees pursuant to 17  
23 U.S.C. § 505, according to proof at trial.  
24

25                   5. For BUZZMEDIA's recoverable costs of suit.  
26

27                   6. For prejudgment and post-judgment interest.  
28

1                   7.     For such other and further relief as the Court may deem just and  
2 proper.

3  
4 Dated: June 17, 2011

SHEPPARD MULLIN RICHTER & HAMPTON LLP

5  
6 By



KENT R. RAYGOR

Attorneys for Counterclaimant BUZZMEDIA


**DEMAND FOR JURY TRIAL**

Pursuant to FED. R. CIV. P. 38(b) and LOCAL RULE 38-1, defendant and counterclaimant BUZZMEDIA, Inc. demands a trial by jury as to all claims triable of right before a jury.

Dated: June 17, 2011

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By

  
KENT R. RAYGOR

Attorneys for Defendant and Counterclaimant  
BUZZMEDIA

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